



# BOARD OF ADJUSTMENT

## AGENDAS & MINUTES

### MINUTES OF SEPTEMBER 24, 2012

The regular meeting of the Sussex County Board of Adjustment was held on Monday, September 24, 2012, at 7:00 p.m. in the County Council Chambers, County Administrative Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Mrs. Susan Isaacs – Chief Zoning Inspector, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of September 10, 2012 as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Finding of Facts for September 10, 2012. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

### PUBLIC HEARINGS

**Case No. 11044 – Deborah Seifrit & Stella Greenberg** – south of Route 277 (Angola Road) east of Angola Road East, being Lot 7 & ½ Lot 8 within Angola by the Bay development. (Tax Map I.D. 2-34-11.16-97.00)

A variance from the side yard & front yard setback requirement.

Mrs. Isaacs presented the case. Daniel Myers, Attorney, was present on behalf of the Applicants requesting a 1.3-foot variance from the required 10-foot side yard setback requirement for an existing dwelling and an 8.1-foot variance from the required 30-foot front yard setback requirement for an existing dwelling and steps. Mr. Myers submitted exhibits to the

Board and stated that the Property is located in the Angola by the Bay development; that the development is non-conforming and was created by a plot recorded in 1968; that the Assessment Property Record card shows the dwelling to be approximately six (6) years old in 1973; that the dwelling was one of the first to be built in the development; that the lot is undersized; that the front property line is shorter in width than the rear property line; that the property is on a curve; that the dwelling was constructed on an angle; that there are two (2) stakes marking the corners of the lot; that the two (2) stakes and advance techniques in surveying may have played a part in the encroachment; that the dwelling may have appeared in compliance at the time of construction; that the need for the variance was not created by the Applicants; that the Applicants did not construct the dwelling; that the variance will not alter the character of the neighborhood since the dwelling has been in its current location for many years; that the variance will have no adverse effect to the adjacent and neighboring properties; that there have been numerous variances granted in the development; and that the variance requested is the minimum variance to afford relief.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to **leave the record open to allow the Applicant to appear and confirm testimony at the Board's next regularly scheduled meeting**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11045 – Indian River Vol. Fire Co.** – southwest of Road 297, approximately 700 feet west of Delaware Street. (Tax Map I.D. 2-34-34.08-42.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Patrick Miller was sworn in and testified on behalf of the Applicant requesting a 6.2-foot variance from the required 10-foot side yard setback requirement for a proposed addition. Mr. Miller testified that he is the President of the Indian River Volunteer Fire Company; that Applicant proposes to construct an addition to the existing building; that the proposed addition will measure fifteen and one-half feet (15 ½) by twenty eight (28) feet; that the addition will include a pantry and walk-in freezer; that the fire company has purchased the adjacent properties known as Lots 43 and 44; that the proposed addition will be located on the side of the Property adjacent to Lots 43 and 44; that the proposed addition will be in line with the existing building; that the location is needed to accommodate the existing kitchen; that there is an existing doorway which prevents the proposed addition from complying with the required setback requirement; that the Applicant has relocated the propane tanks and utility poles to accommodate the addition; that the Applicant may combine the recently purchased parcels with the existing parcel; and that there are wetland issues that must be addressed first. Mr. Miller submitted a survey of the Property.

The Board found that no parties appeared in support of or in opposition to the application.

Mrs. Isaacs stated that the office received three (3) letters in support of the application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11045 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The variance will enable reasonable use of the property;
2. The variance will not impair the uses of neighboring and adjacent properties;
3. The variance will not be detrimental to the public welfare;
4. The variance, if granted will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance to afford relief; and
6. The variance represents the least modification possible of the regulation in issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11046 – Matt Shamenek** – southwest of Route 1 (Coastal Highway) west of Locust Lane, being Lot 9 Block U within Sandy Brae development. (Tax Map I.D. 3-34-6.00-623.00)

A variance from the side yard setback requirement.

Mrs. Isaacs presented the case. Matt Shamenek was sworn in and testified requesting a 0.5 foot variance from the required 10-foot side yard setback requirement for an existing dwelling. Mr. Shamenek testified that he is purchasing the property; that a survey completed for settlement showed the encroachment; that the dwelling was constructed in 1975; that the lot is 100 feet wide; that all the homes in the development seem close to the side yard property lines; that, if the variance is granted, it will not alter the character of the neighborhood; and that the entire structure would have to be moved to comply with the setback requirements.

Judy Dean was sworn in and testified in support of the application and testified that she is the realtor for the property; that the property was acquired by a bank through a foreclosure proceeding; that the bank is selling the property to the Applicant; that the bank had no knowledge of the encroachment; that the dwelling was constructed in 1975; and that she was surprised the encroachment was with the existing dwelling and not the attached garage which was added some years later.

The Board found that one (1) party appeared in support of the application.

The Board found that no parties appeared in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11046 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The lot is narrow making it unique in size;
2. The variance will enable reasonable use of the property;
3. The property cannot be otherwise developed in strict conformity with the Sussex County Zoning Ordinance;
4. The difficulty was not created by the Applicant;
5. The variance, if granted will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance to afford relief.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11047 – Softball World LLC** – south of Route 9 (Lewes Georgetown Highway) 2,300 feet west of Road 321 (Park Avenue). (Tax Map I.D. 1-35-15.00-82.00)

A variance for additional ground sign and a variance from the square footage requirement for an on-premise ground sign.

Mrs. Isaacs presented the case. Wallace Townsend was sworn in on behalf of the Applicant and testified requesting a variance for an additional ground sign and a 40-square-foot variance from the required 200 square-foot requirement for a ground sign. Mr. Townsend testified that the existing sign is to advertise All Hallows Farm; that Sports at the Beach is also located on the Property; that the sign sits approximately 250 feet from the front property line; that he was not aware of a problem until he was contacted by Planning & Zoning; that there are no other signs that size on the property; that he put the sign up and did not obtain a building permit; that he thought the sign location would not create any issues; that the sign is approximately 300 square-feet in size, 18 feet tall and one-sided; that he has added additional signage and lighting to the structure since applying for the variance. The Applicant requested additional time to prepare to present the Application.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that **the case be left open to allow the Applicant time to prepare its case**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11048 – Lewes Auto Mall, LLC** – east of Route 1 (Coastal Highway) south of Marsh Road. (Tax Map I.D. 3-34-6.00-33.00)

A variance from the landscape buffer required in a highway corridor overlay zoning district.

Mrs. Isaacs presented the case. Ring Lardner, an engineer with Davis, Bowen & Friedel, was sworn in and testified on behalf of the Applicant requesting a variance from the landscape buffer requirement in a Highway Corridor Overlay Zoning District. Mr. Lardner testified that the Applicant is requesting a variance from the planting requirement in the landscape buffer; that the Applicant purchased the property in 2008; that the structures on the property have existed since 1984; that the Applicant plans to combine all buildings into one building; that the plantings will have a detrimental effect to the Applicant as the required plantings will obstruct the view of the inventory on the sales lot; that there are no landscape buffers on surrounding properties; that there is currently a grassy landscape buffer; that the Applicant will maintain a 20 foot landscape buffer of grass; that the variance will not alter the character of the neighborhood; and that it is the minimum variance to afford relief. Mr. Lardner submitted pictures of the Property and surrounding properties.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until October 1, 2012**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11049 – JoAnn M. Darlington** – northwest of Route 16 (Broadkill Road) northwest of Georgia Avenue, being Lot 6 Block H within Broadkill Beach, North Shores development. (Tax Map I.D. 2-35-3.16-59.00)

A variance from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. JoAnn Darlington and Robert Nash, a Surveyor, were sworn in and testified requesting a 3.4-foot variance from the required 10-foot side yard setback requirement for an existing shed, a 0.17-foot variance from the required 10-foot side yard setback requirement for an existing dwelling, and a 2.3-foot variance from the required 30-foot front yard setback requirement for a proposed deck. Mr. Nash testified that the existing shed and dwelling were constructed over 20-years ago; that the shed cannot be relocated to comply with setback requirements due to the existing septic system in the rear yard; that the proposed deck will enable the Applicant to enjoy her view of the Delaware Bay; that the proposed size of the deck will allow easier access in and out of her dwelling; that the variances will enable reasonable use of the property; that the variances will not alter the essential character of the neighborhood; that there are other encroachments in the neighborhood; that the Applicant did not create the need for the variance; and that the variances requested are the minimum variances necessary to afford relief. Mr. Nash submitted a side elevation view of the dwelling.

Mrs. Isaacs read 1-letter of opposition into the record.

Ms. Darlington testified that the deck on the first floor of her house is narrow and creates difficulty in opening the door; that she needs the additional deck space in order to move more freely; and that the neighbor in opposition has no deck.

The Board found that no parties appeared in support of or in opposition to the application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be **tabled until October 1, 2012 to allow the office staff time to provide more information on other variances in the area.** Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11050 – John J. Slank, Jr. P.O.A.** – south of road 358 (Sandy Cove Road) east of Holly Terrace development. (Tax Map I.D. 1-34-9.00-187.00)

A variance from the front yard and side yard setback requirements.

Mrs. Isaacs presented the case. John Slank was sworn in and testified requesting a 9.5-foot variance from the required 30-foot front yard setback requirement for an existing dwelling and steps and a 2.2-foot variance from the required 5-foot side yard setback requirement for an existing shed. Mr. Slank testified that he is the Power of Attorney for the property owner who is his sister; that his sister has cancer and has recently lost her husband and son; that she has sold the property but \$10,000.00 has been held in escrow due to the pending variances needed; that the property is located on a dead end road; that the road is maintained by the property owners; that his sister purchased the property in 1966 and built the dwelling in 1969; that the shed has also been on the lot since 1968; that the variances will enable reasonable use of the property; that the variances, if granted, will not alter the essential character of the neighborhood.

Mrs. Isaacs stated that the existing detached garage does not require a variance since it is under 600-square-feet in size.

The Board found that no parties appeared in support of or in opposition to the application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11050 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The age of the structures creates a unique situation;
2. The variances will enable reasonable use of the property;
3. The property cannot otherwise be developed in strict conformity with the Sussex County Zoning Ordinance;
4. The variances, if granted will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances to afford relief; and
6. The variances are not detrimental to the public welfare.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, Mr. Mills – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11041 – Kerry Wertz** – south of Route 54 (Lighthouse Road) south of Wilson Avenue, being Lot 19 within Cape Windsor development. (Tax Map I.D. 5-33-20.18-143.00)

A variance from the side yard setback requirement.

The Board discussed the case which has been tabled since September 10, 2012.

Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11041 for the requested variance since the difficulty was created by the Applicant.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **denied for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

**Case No. 11042 – Charles L. Williams** – northwest of Road 291 (Martins Farm Road) approximately 2,800 feet east of Route 5 (Harbeson Road). (Tax Map I.D. 3-34-9.00-1.03)

A variance from the side yard setback requirement.

The Board discussed this case which has been tabled since September 10, 2012.

Mrs. Isaacs advised the Board that a certificate of compliance was issued in 2008.

Mr. Hudson stated that he would move that the Board recommend approval of Variance Application No. 11042 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The variance, if granted will not alter the essential character of the neighborhood; and
2. The variance sought is the minimum variance to afford relief.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Meeting Adjourned 8:20 p.m.**